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5 UNITED STATES DISTRICT COURT  
6 FOR THE WESTERN DISTRICT OF WASHINGTON  
7 AT SEATTLE

8 UNITED STATES OF AMERICA, et al.,

Case No. C70-9213RSM

9  
10 Plaintiffs,

Subproceeding No. 18-sp-01

11 v.

ORDER DENYING MOTIONS FOR  
TEMPORARY RESTRAINING ORDER

12  
13 STATE OF WASHINGTON, et al.,

14 Defendants.

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16 THIS MATTER comes before the Court on the Swinomish Indian Tribal Community's  
17 and Tulalip Tribes' Motion for Temporary Restraining Order ("TRO"). Dkt. #3.<sup>1</sup> The  
18 Swinomish and Tulalip Tribes seek an Order from the Court restraining the Lummi Nation from  
19 conducting a crab fishery in Area 24A of Region 2 East, presently scheduled to open on June 4,  
20 2018. *Id.* The Court has reviewed the motion, along with its supporting exhibits and related  
21 briefing, as well as oppositions from the Lummi Nation, the Stillaguamish Tribe of Indians, the  
22 Jamestown and Port Gamble S'Klallam Tribes and the State of Washington, and the supporting  
23 briefing. Dkts. #3, #5, #6, #7, #8, #9, #12, #17, #19, #20, #21, #22, #23, #24 and #25.  
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28 <sup>1</sup> Dkt. #21749, C70-9213RSM. All remaining docket citations refer to those documents filed in  
Subproceeding 18-sp-01.

1 The standards for issuing a TRO are similar to those required for a preliminary injunction.  
2 *Lockheed Missile & Space Co., Inc. v. Hughes Aircraft Co.*, 887 F. Supp. 1320, 1323 (N.D. Ca.  
3 1995). The Ninth Circuit has described the standards for deciding whether to grant a motion for  
4 a preliminary injunction as follows:

5 To obtain a preliminary injunction, the moving party must show either (1) a  
6 combination of probable success on the merits and the possibility of  
7 irreparable injury, or (2) that serious questions are raised and the balance of  
8 hardships tips sharply in its favor. These formulations are not different tests  
9 but represent two points on a sliding scale in which the degree of irreparable  
10 harm increases as the probability of success on the merits decreases. Under  
either formulation, the moving party must demonstrate a significant threat of  
irreparable injury, irrespective of the magnitude of the injury.

11 *Big Country Foods, Inc. v. Bd. of Educ. of Anchorage Sch. Dist.*, 868 F.2d 1085, 1088 (9th Cir.  
12 1989) (citations omitted). The speculative risk of a possible injury is not enough; the threatened  
13 harm must be imminent. *Caribbean Marine Services Co., Inc. v. Baldrige*, 844 F.2d 668, 674  
14 (9th Cir. 1988); Fed. R. Civ. Proc. 65(b)(1)(A).

16 The Lummi Nation acknowledges that it has issued a regulation for a crab fishery in Area  
17 24A of Region 2 East. Dkt. #19. However, Lummi asserts that it has no present plan to fish in  
18 those waters, and the regulation serves only as a declaration of its rights to fish in those waters.  
19 *Id.* Before this Court, Lummi declares that it has no intention to exercise its alleged rights this  
20 season, and it will send “zero boats and zero fishers” to the crab fishery. Dkt. #19 at 1. Indeed,  
21 the regulation issued expressly states that the “expected effort” is “zero boats and zero fishers.”  
22 Dkt. #3-6, Ex. 5. Lummi further represents that Lummi fishers will only respond to the regulation  
23 if it is transmitted to them through the Lummi Fishing Regulation Hotline, which Lummi does  
24 not intend to do. Dkt. #22 at ¶ 7. Fishers would then be required to obtain the necessary tags  
25 from Lummi before being authorized to fish; however, Lummi does not intend to order those  
26 tags. *Id.* at ¶ 9. Thus, “[n]o Lummi fishers will be authorized to fish in the opening in Area 2E.”  
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1 *Id.* at ¶ 9. Based on these representations, this Court finds that the moving Tribes are unable to  
2 meet the applicable TRO standard and the motion will be DENIED.

3 The Upper Skagit Indian Tribe has also filed a Motion for Temporary Restraining Order  
4 in this matter for nearly identical reasons, albeit based on facts specific to that Tribe. Dkt. #7.  
5 The Court DENIES that motion for the same reason.  
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7 Accordingly, the Court hereby finds and ORDERS:

- 8 1. The Swinomish Indian Tribal Community's and the Tulalip Tribes' Motion for  
9 Temporary Restraining Order (Dkt. #3)<sup>2</sup> is DENIED.  
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11 2. The Upper Skagit Indian Tribe's Motion for Temporary Restraining Order (Dkt.  
12 #7)<sup>3</sup> is DENIED.

13 DATED this 1st day of June, 2018.  
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16 RICARDO S. MARTINEZ  
17 CHIEF UNITED STATES DISTRICT JUDGE  
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27 <sup>2</sup> Dkt. #21749, Case No. C70-9213RSM.

28 <sup>3</sup> Dkt. #21754, Case No. C70-9213RSM.